



AF 3677
ZFW

P-3952-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: JOYCE BRETT
MARK: A BAND-AID APPLIED JEWELRY DISPLAY
SERIAL NO.: 10/029,818
FILED: December 31, 2001
EXAMINER: Katherine W. Mitchell, Examiner, Art Unit 3677

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY TO EXAMINER'S ANSWER

Of the two 35 U.S.C. rejections based on 112 and 103(a), the former is apparently withdrawn in view of the clarification provide in applicant's BRIEF OF APPLICANT as stated in paragraph (11) RESPONSE TO ARGUMENT on pages 6,7.

As to the latter rejection based on 103(a), applicant stands on its argument in BRIEF OF APPLICANT and supplements this argument in the comment which follow.

The examiners rejection is correctly reported as based on 103(a) for obviousness and not on 102(b) for anticipation, and thus is correct that In re Hiniker is inapposite. However, for its argument the examiner "takes Official Notice that it is well known for adhesive bandages to be applied to the face; such as is commonly done by a person after an injury resulting from shaving, or when such person has cut or otherwise injured the skin on the face" (underlining added) [at EXAMINER'S ANSWER, page 6, lines 8-10].

For the 103(a) obviousness rejection however, what the examiner is taking official notice of does not make the point intended and, to be more to the obviousness rejection should be that adhesive bandages are applied to the face to implement a jewelry display. As to such facts the examiner's reliance on "Official Notice" is not in compliance with the memorandum clarifying the circumstances in which it is appropriate to rely on "Official Notice" in making a rejection of the directive dated February 21, 2002 to Patent Examining Corps/Technology Center Directors from Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy.


It was not appropriate in this case for the examiner to take official notice of facts, namely applicant's method steps of lines 12-15 and 17-21 without citing a prior art reference where the facts asserted to be well know are not capable of instant and unquestionable demonstration as being well known.

In these circumstances in particular, applicant has made of record the shortcomings of manual placement of individual placement of rhinestones at BRIEF OF APPLICANT on page 3, lines 5-9, paraphrasing from the application page 4, lines 2-6, and solving the shortcomings demonstrates applicant's creativity, and it was the proof burden of the examiner, who is arguing otherwise, to comply with Deputy Commissioner Stephen G. Kunin's directive of February 21, 2002, and this has not been done in this record on appeal.

For the foregoing reasons it is respectfully requested that the rejection of the claim on appeal be reversed.

Respectfully,

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